IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 23 of 2006
WITH
CIVIL APPLICATION NO.1384 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATVERLAL NATHALAL PATEL - Appellant(s)

Versus

DAHIBEN (DAMYANTIBEN),WD/O HIRABHAI NAROTTAMDAS PATEL & 6-Defendant(s)

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Appearance :
MR.M.B.GANDHI for Appellant(s) : 1
None for Defendant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 7.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 07/02/2006

ORAL JUDGMENT

This Appeal from Order arises out of an order passed by the learned Presiding Officer, Court No.6 of the City Civil Court, Ahmedabad on 2/1/2006, below Notice of Motion, Exh.44 in Civil Suit No.1146 of 2003, preferred by the appellant.

2. The appellant has filed the suit, asserting a right on the suit property, on basis of an agreement to sell (banakhat) executed in his favour by the land owners on 30/3/1961 (mark 3/4). By virtue of that agreement, the land in question was agreed to be sold by the land owners to the appellant, but could not be sold by executing a sale-deed, as the land was falling within the green belt. By subsequent endorsement below the said agreement to sell, the time limit for getting a sale-deed executed was extended by three months and it was agreed that if within that time, the green belt restrictions are not lifted, the appellant may get the time limit extended from time to time, to which the land owners agreed. It was also agreed that the appellant would get the sale-deed executed within one month from the date the green belt restrictions are lifted. Undisputedly, the green belt restrictions are lifted from 18/5/2002.

3. The suit came to be filed by the appellant on basis of a public notice and injunction is sought against respondents No.5 and 6 Societies, against

creation of new rights or developments. The trial Court refused to grant indulgence considering the fact that in the year 1967, a notice was published by the original land owners, to which the appellant had not reacted and, therefore, the question of limitation may come in way of the appellant. The trial Court, also considered various other aspects like execution of certain documents by original landlord in favour of another party in the year 1987, to which the appellant was attesting party.

4. Learned Advocate, Mr.Gandhi, has contended that there is no question of suit being time barred, as limitation period is three years. He submitted that green belt restrictions are lifted on 18/5/2002. The suit is filed in the year 2003 and therefore, it is within limitation. He submitted that notice of 1967 was invalid, as the original landlord did not have any right to sell the property or to create a third party right, as the green belt restrictions were in subsistence at that point of time and, therefore, inaction on part of the appellant, pursuant to notice of 1967 may not come in way of appellant's right of claiming injunction.

4.1 Mr.Gandhi, submitted that the agreement of 20/1/1987 recognizes the appellant's right to the property on basis of 1961 agreement to sell.

Mr.Gandhi, submitted that the only indulgence that the appellant seeks is that respondents No.5 and 6 may not further develop the property, may not sell or transfer the property and may not create any new encumbrance thereon, so as to jeopardize the right of the appellant flowing from 1961 Banakhat. Mr.Gandhi, submitted that the Court below has erred in not appreciating the case of the appellant from this perspective and, therefore, the appeal may be admitted and injunction as prayed for, may be granted.

5. This Appeal must fail on the following grounds.

i) The plaintiff-appellant asserts a right on the suit property by virtue of an agreement to sell dated 30/3/1961. By virtue of that agreement to sell, a sale-deed was required to be got executed by the appellant within stipulated time limit. However, that was not done and, therefore, on 26/1/1962, endorsement was put below that document, to that effect that the time limit is extended by three months and if, within that time of extended period of three months, the green belt restrictions are not lifted, the appellant will get the time limit extended and the land owner will extend the time limit as and when that is asked for. It was also agreed that on green belt restrictions being lifted, the appellant will get

executed from the land owner a sale-deed in his favour. Undisputedly, after this endorsement of 26/1/1962, the time limit in the agreement to sell has not been got extended by the appellant nor the execution of sale-deed is pressed for by the appellant from the land owner within one month from lifting of green belt restrictions on 18/5/2002. Prima-facie, therefore, the conditions of that agreement to sell are not fulfilled.

ii) It transpires that an agreement to sell was executed between original landlord and one Muktanand Cooperative Society on 31/12/1980, to which the appellant was attesting party. Similarly, one more agreement to sell was executed on 20/1/1987 between Muktanand Cooperative Society and one Bholabhai Patel of Mangalkrupa Society, to which also, the appellant was attesting witness and without any dispute, there is no reference in these documents about any right existing in favour of the appellant by virtue of 1961 document. This makes it clear that the appellant was made aware of the fact that the original land owner refuses to recognize his right in the property by virtue of 1961 document and still the appellant takes no action for decades, till he files the suit in the year 2005.

iii) Apart from the above aspect, the appellant enters into an agreement on 20/1/1987 itself with Bholabhai Patel of Mangalkrupa Society, whereby Bholabhai agrees to pay an amount of Rs.69/- per square yard of land to the appellant. To that document, the original land owners are not parties. Be that as it may, fact remains that even by conduct, the appellant does not assert or claim any right in the suit property by virtue of 1961 document. On the contrary forgoes right, if any, by agreeing to accept Rs.69/- per square yard from Bholabhai.

iv) It appears that sale-deeds have been executed in respect of suit property by original landlord in favour of respondents No.5 and 6, in the year 2002, more precisely on 2/12/2002 and, thereafter, the present suit is filed in the year 2003 by the present appellant claiming right on basis of 1961 document.

v) It is appearant from the order that the trial Court has refused to use discretion in favour of the appellant on appreciation of all relevant factors. The order cannot be considered as perverse or arbitrary in any manner.

6. In light of the above factors, it cannot be said that the trial Court has committed any error in not granting injunction. This Court express no view, at this point on the view taken by the Court on limitation, but this Court is of the firm view that the appellant does not have a prima-facie case for injunction in his favour. The purchaser by a registered sale-deed cannot be prevented from utilizing the property or developing it on basis of an unregistered agreement to sell executed 40 years back in light of factors indicated hereinabove. Therefore, this Court finds no merits in the appeal. Appeal must fail and stands dismissed.

7. In view of the dismissal of Appeal from Order, Civil ApplicationNo.1384 of 2006 would not survive and is accordingly disposed of.

(A. L. DAVE, J.)

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